

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE ANTONIO GARCIA,

Defendant.

4:14-CR-3046

MEMORANDUM AND ORDER

This matter is before the Court on the Stipulation Regarding Forfeited Property (filing 57) jointly submitted by the claimant, Atlas Capital, Inc. ("Atlas"), and the plaintiff. On October 8, 2014, the Court entered a Preliminary Order of Forfeiture (filing 44) pursuant to 21 U.S.C. § 853, based upon the defendant's plea of guilty to violating 21 U.S.C. §§ 841 and 846 and his admission of the forfeiture allegation contained in the indictment (filing 1). By way of the Preliminary Order of Forfeiture, the defendant forfeited to the United States his interest in one 2009 Freightliner semi-tractor, VIN# 1FUJBBCKX9DAG5605 (the "subject property").

As directed by the Preliminary Order, a Notice of Criminal Forfeiture was posted on an official internet government forfeiture site, www.forfeiture.gov, for at least 30 consecutive days, beginning on October 10, 2014, as required by Rule G(4)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. A Declaration of Publication (filing 56) was filed on January 14, 2015. The plaintiff also provided notice to claimant Atlas, which claims a security interest in the subject property.

Atlas filed a petition, setting forth the terms of its perfected security interest in the subject property. Filing 47. The petition claims that Atlas was reasonably without cause to believe that the subject property was being used to facilitate the defendant's criminal violations, that the defendant is in default under a loan to Atlas, and that the defendant owes Atlas \$7,878.85 together with interest accruing thereon from and after October 28, 2014, at a rate of \$11.81 per day. Filings 47 and 57.

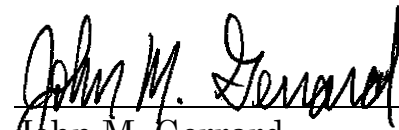
Through their Stipulation, the plaintiff and Atlas have agreed that Atlas' right, title, and interest in the subject property is superior to any interest held by the plaintiff. Filing 57 at ¶ 4. And they have agreed to resolve Atlas' petition without a trial. Accordingly,

IT IS ORDERED:

1. The Court approves the parties' Stipulation Regarding Forfeited Property (filing 57).
2. The U.S. Marshals Service, as custodian of subject property, will sell the subject property at public auction on or before March 1, 2015. The proceeds of the sale shall be applied first, to the payment of the U.S. Marshals Service's expenses of advertising and selling the Freightliner, and second, to the payment of Atlas' debt. The balance, if any, will be held by the U.S. Marshals Service pending the entry by this Court of a Final Order of Forfeiture.
3. Atlas may appear at the auction to bid on the subject property and shall have the right to make a credit bid up to the amount of its lien. Atlas must pay cash for any amount it bids over and above the amount of its lien.
4. Atlas shall deliver the signed certificate of title releasing its lien to its Nebraska attorneys, Rembolt Ludtke, LLP, within 10 days of an order approving this Stipulation. Rembolt Ludtke, LLP shall tender the title and the signed release to the U.S. Marshals Service immediately upon the conclusion of the sale of the subject property. The release shall not be valid until such tender is made, at which time Atlas' lien shall attach only to the sale proceeds.

Dated this 20th day of January, 2015.

BY THE COURT:



John M. Gerrard
United States District Judge